



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Melvin Jokela et al.

Examiner: Sow-Fun Hon

Serial No.: 10/695,031

Group Art Unit: 1772

Filed: October 28, 2003

Docket: 2487.003US1

For: PACKAGE COATING, PROCESSES OF MAKING, AND PACKAGING  
SYSTEMS

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**APPEAL BRIEF UNDER 37 CFR § 41.37**

Mail Stop Appeal Brief- Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The Appeal Brief is presented in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on July 3, 2006, from the Final Rejection of claims 1-10, 12-20 of the above-identified application, as set forth in the Final Office Action mailed February 2, 2006.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of \$500.00 which represents the requisite fee set forth in 37 C.F.R. § 41.20(b)(2). The Appellants respectfully request consideration and reversal of the Examiner's rejections of pending claims.

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**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

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## **1. REAL PARTY IN INTEREST**

The real party in interest of the above-captioned patent application is the assignee,  
POTLATCH CORPORATION.

## **2. RELATED APPEALS AND**

In accordance with 37 CFR §41.37(c)(1)(ii) requiring identification of all other appeals and interferences which would have any bearing on the Board's Decision in the present Appeal, to the best knowledge of Appellant, there have not been and are not any other Appeals, and no Interferences, based on the subject application.

### **3. STATUS OF THE CLAIMS**

In accordance with 37 CFR § 41.37(c)(1)(iii) requiring a statement of the status of all claims, pending and cancelled, Appellant submits the following:

Claims 1-27 have been advanced during the prosecution history of the application.

Claims 1-9 were withdrawn from consideration under a Restriction Requirement. Claims 1-4 and 20-34 are therefore pending.

Claims 10 and 12-27 stand finally rejected under 35 USC §103.

Claims 10 and 12-27 have been rejected and/or have been given a final rejection, and accordingly, the jurisdictional prerequisite under 37 CFR §1.191 for Appeal from the Decision of the Examiner to the Board of Patent Appeals and Interferences has been met. In view of the requirements under 37 CFR §1.191 that an Appeal in an application or reexamination preceding identify, when the Appeal is taken, all rejected claim or claims which are to be appealed and proposed to be contested, Appellant respectfully submits that all presently rejected claims (10 and 12-27) are appealed.

#### **4. STATUS OF AMENDMENTS**

The following is a statement of the status of any Amendments filed subsequent to final rejection (as required by 37 CFR §41.37(c)(1)(iv)).

No amendments have been made subsequent to the Final Office Action dated February 2, 2006.

## **5. SUMMARY OF CLAIMED SUBJECT MATTER**

A concise explanation of the claimed embodiments defined in the claims in the Appeal, which refers to the specification by page and line number and to the drawings by reference characters (as required by 37 CFR §41.37(c)(1)(v)) is detailed as follows.

A claimed embodiment includes a method comprising forming a barrier structure proximate a substrate edge. Reference can be made to FIG. 1 and 3P and to independent claim 10 for illustration of a summarized embodiment.

The claimed embodiment includes a packaging article comprising:

- a substrate (110) including a first side thereof;
- a brightener first film (114) above the substrate (110), wherein the brightener first film (114) includes calcium carbonate in a first amount, and brightener particles in a second amount, wherein the first amount is more than the second amount, and wherein the brightener first film (114) includes at least one binder;
- a brightener second film (116) above the first brightener film (114), wherein the brightener second film (116) includes calcium carbonate in a third amount, and brightener particles in a fourth amount, wherein the fourth amount is more than the third amount, and wherein the brightener second film (116) includes at least one binder; and
- a finish third film (118) above the brightener second film.

This summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellant refers to the appended claims and its legal equivalents for a complete statement of the invention.

## **6. ISSUES PRESENTED FOR REVIEW**

In accordance with 37 CFR §41.37(c)(1)(vi)), the following is a concise statement of each ground of rejection presented for review.

1) Whether claims 10 and 12-27 are unpatentable under 35 USC § 103(a) as being obvious over by Shanton (U.S. 5,776,619) in view of Nelli et al. (U.S. 5,439,707) where Nelli et al. teaches away from a second layer, and where Shanton teaches preferred embodiments that also lead away from Appellant's claims.



## **7. ARGUMENT**

The contentions of Appellant with respect to the issue presented for review in the foregoing Item 6 and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on, (as required by 37 CFR § 1.1 92(c)(8)), are provided as follows, with each issue being treated under a separate heading.

For each rejection under 35 USC § 103(a), Appellant's argument specifies (as required by 37 CFR 41.37(c)(1)(vii)) the errors in the rejection and why the rejected claims are patentable under 35 USC § 103(3), including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.

All descriptions of Appellant's disclosed and claimed embodiments, and all descriptions and rebuttal arguments regarding the applied references, as previously submitted by Appellant in any form, are repeated and incorporated herein by reference. Further, all Office Action statements regarding the objections and rejections are respectfully traversed. Further, Appellant submits the following.

### **A) The Applicable Law**

#### **1) § 103. Conditions for patentability; non-obvious subject matter**

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

“To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure.” (In re Vaack, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (M.P.E.P. § 2143 8<sup>th</sup> Ed, Rev.4).)

The Office Action must provide specific, objective evidence *of record* for a finding of a teaching, suggestion, or motivation to combine reference teachings and must explain the reasoning by which the evidence is deemed to support such a finding. *In re Sang Su Lee*, 277 F.3d 1338 (Fed. Cir. 2002). (Emphasis added).

It is impermissible to use the claimed invention as a “template” to piece together the teachings of the prior art to render the claimed invention obvious. *In re Fritch*, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

**B) ARGUMENT: The Office fails to establish a *prime facie* case of obviousness**

1. Claims 10-21 and 24-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shanton (U.S. 5,776,619) in view of Nelli. The Office asserted that “Shanton is the primary reference”. (Final Office Action at page 3). The order of references asserted is immaterial.

A previous Office Action admitted that Shanton “fails to teach that the calcium carbonate in a first amount in the brightener first film, is more than the brightener particles in a second amount in the first brightener film ....” (Office Action at page 6). This is an instant claim limitation, and Appellant agrees.

The previous Office Action also asserted that combination of Nelli with Shanton, would have been obvious to one of ordinary skill in the art. The Final Office Action refers to Nelli’s film (Nelli at column 2 lines 35-40) as “a “first film”.

But Nelli teaches only one film as sufficient.

The Advisory Action (AA) addresses Appellant’s traversal of Nelli teaching only one layer, with the following paragraph:

Applicant is respectfully apprised that the primary reference, Shanton, teaches the first and second brightener films, and that Nelli is the secondary reference which teaches that the first brightener film includes calcium carbonate in a first amount of 47% which is more than the brightener particle in a second amount, because calcium carbonate has the high absorbance desire to in the drying process (column 2, lines 35040) when the next layer is applied ontop of the first brightener film, thus providing the motivation to use a first brightener film ....”

Although this sentence is long, the defect can be seen by focusing on the portion that the Office applies to Nelli.

Applicant is respectfully apprised that the primary reference, Shanton, teaches the first and second brightener films, and that Nelli is the secondary reference which teaches that the first brightener film includes calcium carbonate in a first amount of 47% which is more than the brightener particle in a second amount, because calcium carbonate has the high absorbance desired to in the drying process (column 2, lines 35-40) when the next layer is applied ontop of the first brightener film, thus providing the motivation to use a first brightener film ....”

But Nelli does not teach this. Nelli teaches something materially different at col. 2, lines 35-40. Further, Nelli does not teach what the Office asserts, in column 2, or anywhere else in Nelli’s disclosure. What Nelli teaches is the “coating formulation has high water absorbency to aid in the *ink drying process on a post print flexographic press*.” (Id. Emphasis added). Nelli reiterates this as “uniquely prepared” in subsequent paragraphs, ending at column 3, line 24.

Because Nelli expects to print on his first and only layer and not to put a second brightener coat thereon, Nelli, would therefore not look to Shanton or elsewhere for a second brightener film to be placed on his only brightener film. Consequently, the combination of Nelli with Shanton can only be reached by using Appellant’s disclosure as a guide.

The only “first film” element that is taught by a combination of the cited references is Shanton’s “preferred base coat (‘first film’) mixture”. Shanton teaches, however, that his “*preferred* base coat pigment mixture is 80 parts kaolin clay and 20 parts calcium carbonate ....” (Shanton at column 4, lines 43-45, emphasis added), *i.e.*, that the calcium carbonate in a first amount in the brightener first film is *less* than the brightener particles in a second amount in the first brightener film. Thus, Shanton teaches something as preferred that points away from what is claimed. Nelli also teaches away from what is claimed because Nelli teaches a single coat. Thus the combination of Shanton with Nelli cannot be reached without using Appellant’s disclosure as a guide. Withdrawal of the rejections is respectfully requested.

2. The Final Office Action also asserted that “although the foregoing pigments [of Shanton] are preferred as components ... other pigments could be used.” (Final Office Action at page 4).

But Shanton gives no amounts or ratios for the list of “other pigments” beginning at column 5, line 66. Thus, Shanton neither prefers this list nor teaches amounts or ratios to use. Consequently, this is a non-enabling teaching by Shanton, which is further weakened by Shanton’s preferred teaching.

The previous Office Action also admitted that Shanton “fails to teach ... that a finish third film is provided above the brightener second film.” (Office Action at page 6). Appellant agrees.

The Office further asserted, by contradiction, *supra*, that “Shanton teaches that [etc.] are used as film formers ... and varnishes ....” Appellant respectfully asserts that none of these substances are taught in connection with a “finish third film” (Claim 10), rather, only in connection with Shanton’s “base or top coat” (Shanton at column 5, line 28) and as otherwise described with Shanton’s, *e.g.*, “preferred acrylate-styrene-acrylonitrile polymer with a 90/10 or 80/20 blend of kaolin to calcium carbonate clearly demonstrate higher gloss varnish ....” (Shanton at column 7, lines 30-34). Thus the admission of the Office is correct and Shanton does not teach a finish third film as claimed. The Office Action adds nothing from Nelli to remedy this deficiency. Because all the claim limitations are not taught by the cited references, alone or in combination, withdrawal of the rejections is respectfully requested.

Claims 11-21 depend from claim 10 and therefore, a *prima facie* case of obviousness has not been established for claim 10.

Regarding claims 12-13, the combination of Shanton with Nelli does not teach all the limitations of these claims as admitted by the Office with respect to claim 10.

Regarding claim 14, the combination of Shanton with Nelli does not teach all the limitations of these claims as admitted by the Office with respect to claim 10.

Regarding claim 15, the combination of Shanton with Nelli does not teach all the limitations of these claims as admitted by the Office with respect to claim 10.

Regarding claims 16-17, the Office Action admitted that “Shanton in view of Nelli fails to disclose that the polyvinylacetate latex and SBR latex are in a ratio of about 10:9 ....” The Office Action asserted that one can reach the limitations of claims 16-17 by use of Shanton and Nelli. But as set forth above, because the combination of Shanton with Nelli does not teach all

the limitations of these claims as admitted by the Office with respect to claim 10, withdrawal of the rejection is respectfully requested.

Regarding claim 18, because the combination of Shanton with Nelli does not teach all the limitations of these claims as admitted by the Office with respect to claim 10, withdrawal of the rejection is respectfully requested.

Regarding claims 19-20, the Office Action admitted that “Shanton in view of Nelli fails to disclose that the polyvinylacetate latex and SBR latex are in a ratio of about 1:1 ....” The Office Action asserted that one can reach the limitations of claims 19-20 by use of Shanton and Nelli. But as set forth above, the combination of Shanton with Nelli does not teach all the limitations of these claims as admitted by the Office with respect to claim 10.

Regarding claims 24-25, the Office Action used the same mechanism to reject these claims as the rejection of claim 10. Because the Office has second admitted, however, that Shanton “fails to teach ... that a finish third film is provided above the brightener second film” (Office Action at page 6), and because as asserted above, neither did the Office invoke Nelli to remedy this deficiency, withdrawal of the rejection is respectfully requested.

3. Claims 22-23 and 26-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shanton in view of Nelli as applied to claims 10-21 and 24-25 above, and further in view of Kinsey (U.S. 6,110,548).

The Final Office Action did nothing to rebut Appellant’s traversal. The Office has the burden of coming forward with a rebuttal.

Kinsey adds nothing to remedy the deficiencies of Shanton in View of Nelli with respect to the limitations of the brightener first film and the finish third film of claim 10. Although Kinsey may teach a gable (claim 22), the combination of Shanton in view of Nelli and Kinsey does not teach the limitations of the brightener first film and the finish third film. Although Kinsey may teach a skived gable with an inner surface (claim 23), the combination of Shanton in view of Nelli and Kinsey does not teach the limitations of the brightener first film and the finish third film.

Although Kinsey may teach a gable (claim 26), the combination of Shanton in view of Nelli and Kinsey does not teach the limitations of the brightener first film and the finish third film.

Although Kinsey may teach a skived edge (claim 27), the combination of Shanton in view of Nelli and Kinsey does not teach the limitations of the brightener first film and the finish third film.

## 8. SUMMARY

It is respectfully submitted that the art cited does not render the claim anticipated and that the claims are patentable over the cited art. Reversal of the rejection and allowance of the pending claim are respectfully requested.

Respectfully submitted,

MELVIN JOKELA et al.

By their Representatives,

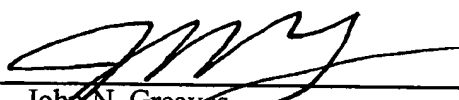
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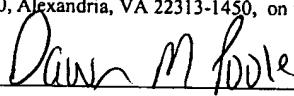
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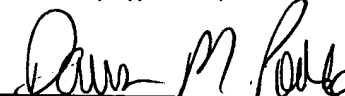
  
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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Appeal Brief, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 6<sup>th</sup> day of September 2006.

Name



Signature



## CLAIMS APPENDIX

1. A process comprising:

forming a first mixture over a substrate, wherein first mixture includes a first mixture first fluid content, and that includes from about 75% to about 82% inorganics and the balance organics;

lowering the first mixture first fluid content to a first mixture second fluid content;

forming a second mixture over the first mixture, wherein the second mixture includes a second mixture first fluid content, and that includes from about 70% to about 86% inorganics and the balance organics;

lowering the second mixture first fluid content to a second mixture second fluid content;  
and

forming a finish film over the second mixture.

2. The process according to claim 1, wherein the substrate includes a paperboard layer, wherein forming the first mixture includes forming an aqueous mixture of the inorganics and the organics, wherein the aqueous mixture is up to about 40% liquid, wherein the inorganics include from about 0 to about 100% calcium carbonate, and the balance at least one of clay, kaolin clay, titanium oxides, niobium oxides, aluminum oxides, cerium oxides, thorium oxides, hafnium oxides, zirconium oxides, zinc oxides, aluminum trihydrate, uranium fluorides, and combinations thereof, and wherein the organics include from about 0 to about 100% of a composition selected from ethylene vinyl alcohol copolymer, polyolefin polymer, polyethylene polymer, polyvinyl acetate latex, styrene butadiene latex, styrene butadiene acrylonitrile latex, ethylene vinyl acetate latex, and combinations thereof.

3. The process according to claim 1, wherein the substrate includes a paperboard layer and a sizing layer, wherein forming a second mixture includes forming an aqueous mixture of the inorganics and the organics, wherein the aqueous mixture is up to about 40% liquid, wherein the inorganics include from about 0 to about 100% calcium carbonate and the balance at least one of



clay, kaolin clay, titanium oxides, niobium oxides, aluminum oxides, cerium oxides, thorium oxides, hafnium oxides, zirconium oxides, zinc oxides, aluminum trihydrate, uranium fluorides, and combinations thereof, and wherein the organics include from about 0 to about 100% of a composition selected from ethylene vinyl alcohol copolymer, polyolefin polymer, polyethylene polymer, polyvinyl acetate latex, styrene butadiene latex, styrene butadiene acrylonitrile latex, ethylene vinyl acetate latex, and combinations thereof.

4. The process according to claim 1, wherein forming a finish film over the second mixture, results in a first mixture weight in a range from about 4 lb/3,000 ft<sup>2</sup> to about 10 lb/3,000 ft<sup>2</sup>, a second mixture weight in a range from about 4 lb/3,000 ft<sup>2</sup> to about 10 lb/3,000 ft<sup>2</sup>, a finish film weight in a range from about 6 lb/3,000 ft<sup>2</sup> to about 45 lb/3,000 ft<sup>2</sup>, and a total weight from about 100 lb/3,000 ft<sup>2</sup> to about 400 lb/3,000 ft<sup>2</sup>.

5. The process according to claim 1, wherein the first mixture is on the substrate at an outer surface, the substrate including an outer surface and an inner surface, the process further including:

forming a barrier film over the substrate inner surface, wherein forming a finish film over the second mixture, results in a first mixture weight in a range from about 4 lb/3,000 ft<sup>2</sup> to about 10 lb/3,000 ft<sup>2</sup>, a second mixture weight in a range from about 4 lb/3,000 ft<sup>2</sup> to about 10 lb/3,000 ft<sup>2</sup>, a finish layer weight in a range from about 6 lb/3,000 ft<sup>2</sup> to about 45 lb/3,000 ft<sup>2</sup>, and a total weight from about 100 lb/3,000 ft<sup>2</sup> to about 400 lb/3,000 ft<sup>2</sup>.

6. The process according to claim 1, wherein the first mixture is on the substrate at an outer surface, the substrate including an outer surface and an inner surface, the process further including:

forming a barrier film over the substrate inner surface, wherein forming the barrier film over the substrate inner surface is carried out substantially simultaneously with forming a finish film over the second dispersion.

7. The process according to claim 1, the process further including:

folding the substrate into a container.

8. The process according to claim 1, the process further including:  
associating a commercial product with the substrate.
9. The process according to claim 1, the process further including:  
skiving a portion of the substrate.
10. A packaging article comprising:  
a substrate including a first side thereof;  
a brightener first film above the substrate, wherein the brightener first film includes calcium carbonate in a first amount, and brightener particles in a second amount, wherein the first amount is more than the second amount, and wherein the brightener first film includes at least one binder;  
a brightener second film above the first brightener film, wherein the brightener second film includes calcium carbonate in a third amount, and brightener particles in a fourth amount, wherein the fourth amount is more than the third amount, and wherein the brightener second film includes at least one binder; and  
a finish third film above the brightener second film.
12. The packaging article according to claim 10, wherein the calcium carbonate in the brightener first film has a calcium carbonate/brightener particles ratio from about 50% to about 100 %.
13. The packaging article according to claim 10, wherein the calcium carbonate in the brightener second film has a calcium carbonate/brightener particles ratio from about 0% to about 50 %.
14. The packaging article according to claim 10, wherein the brightener particles are selected from clay, kaolin clay, titanium oxides, niobium oxides, aluminum oxides, cerium oxides,

thorium oxides, hafnium oxides, zirconium oxides, zinc oxides, aluminum trihydrate, uranium fluorides, and combinations thereof.

15. The packaging article according to claim 10, wherein the brightener first film includes from about 12% to about 25% of a mixture including polyvinylacetate (PVAc) latex and styrene butadiene (SBR).

16. The packaging article according to claim 10, wherein the brightener first film includes from about 12% to about 25% of the at least one binder, and the balance the calcium carbonate and the brightener particles, and wherein the at least one binder includes a mixture including polyvinylacetate (PVAc) latex and styrene butadiene (SBR), wherein the PVAc latex and the SBR are in a ratio of about 10:9.

17. The packaging article according to claim 10, wherein the binder in the brightener first film includes about 10 parts polyvinylacetate (PVAc) latex about 9 parts styrene butadiene (SBR), and the balance includes the calcium carbonate and the brightener particles in a ratio from about 20-80 parts calcium carbonate and about 20-80 parts brightener particles.

18. The packaging article according to claim 10, wherein the binder in the brightener second film includes from about 14% to about 30% of a mixture including polyvinylacetate (PVAc) latex and styrene butadiene (SBR).

19. The packaging article according to claim 10, wherein the at least one binder in the brightener second film includes from about 14% to about 30% of a mixture including polyvinylacetate (PVAc) latex and styrene butadiene (SBR), and the balance the calcium carbonate and the brightener particles, and wherein the PVAc latex and the SBR are in a ratio of about 1:1.

20. The packaging article according to claim 10, wherein the at least one binder in the brightener second film includes about 12 parts polyvinylacetate (PVAc) latex and about 12 parts

styrene butadiene (SBR), and wherein the balance includes the calcium carbonate and the brightener particles in a ratio from about 20-80 parts calcium carbonate and about 20-80 parts brightener particles.

21. The packaging article according to claim 10, wherein the finish third film is selected from ethylene vinyl alcohol copolymer, polyolefin polymer, polyethylene polymer, nylon polymer, polypropylene polymer, polyvinyl acetate latex, styrene butadiene latex, styrene butadiene acrylonitrile latex, ethylene vinyl acetate latex, and combinations thereof.

22. The packaging article according to claim 10, wherein the packaging article has a gable-top package configuration.

23. The packaging article according to claim 10, wherein the packaging article has a gable-top package configuration with an inner surface and the finish third film has an outer surface, and wherein the gable-top package is skived.

24. A packaging system comprising:

a folded and bonded substrate including first outer surface and a second inner surface, wherein the substrate includes a first side thereof;

a brightener first film above the substrate, wherein the brightener first film includes calcium carbonate in a first amount, and brightener particles in a second amount, wherein the first amount is more than the second amount, and wherein the brightener first film includes at least one binder;

a brightener second film above the first brightener film, wherein the brightener second film includes calcium carbonate in a third amount, and brightener particles in a fourth amount, wherein the fourth amount is more than the third amount, and wherein the brightener second film includes at least one binder;

a finish third film above the brightener first film; and

a commercial product disposed within the folded and bonded substrate.

25. The packaging system according to claim 24, wherein the finish third film is above and on the brightener second film.

26. The packaging system according to claim 24, wherein the packaging system has a gable-top package configuration.

27. The packaging article according to claim 24, wherein the packaging system includes a skived edge.

**EVIDENCE APPENDIX**

None.

**RELATED PROCEEDINGS APPENDIX**

None.